

operate the business at a profit. After ceasing payments under the agreements and abandoning the business, Plaintiffs brought suit in Monroe County Chancery Court for fraudulent misrepresentation and violation of the Tennessee Consumer Protection Act, and asked for compensatory and punitive damages. The Trial Court found that Defendant had made misrepresentations concerning the past income of the laundromats, that Plaintiffs had relied on the misrepresentations, and awarded damages to Plaintiffs. Along with the return of the monies paid under the promissory note, the Chancellor awarded Plaintiffs return of the rent and lease-purchase payments made to Defendant, and damages for money paid out of Plaintiffs' personal funds to meet the obligations of the business. Defendant was awarded a set-off for unpaid wages and for amounts due under the separate vending machine contract. For the reasons stated below, we affirm the Trial Court.

BACKGROUND

In December 1995, Plaintiff Earl Smith, then a resident of another state, was visiting his mother in Monroe County, Tennessee. During this visit, Plaintiff became aware of a business opportunity in the Sweetwater area and contacted Norman Lee, a real estate agent who had the listing for Defendant's Tub O Suds laundromats. A document titled Exclusive Listing for Sale was provided to Plaintiff by the agent, which contained the notation "approximate gross income \$17,500 - net \$9,500." Plaintiff Earl Smith and his wife, Plaintiff Alice Smith, entered negotiations to purchase the Tub O Suds, and on February 1, 1996, the parties entered into a contract of sale to purchase the business, exclusive of the buildings and real estate. There were two separate Tub O Suds Laundromat locations covered by this contract of sale. Plaintiffs subsequently executed a \$92,000.00 promissory note with related security agreement for the balance of the purchase price, and a lease-purchase agreement for the building and real property of one of the Tub O Suds locations. On April 10, 1996, the parties entered into a separate contract for Defendant to supply vending machines for the business.

After Plaintiffs moved to Tennessee and took over operation of the business, the gross income and net were not close to what had been represented on the real estate listing sheet, and

Plaintiffs experienced difficulty in meeting the financial obligations of the business. After making payments on the promissory note, lease-purchase, and other agreements for several months, Plaintiffs stopped making all payments, and on May 10, 1997, Plaintiffs abandoned both Tub O Suds locations.

On May 20, 1997, Plaintiffs filed suit in the Chancery Court for Monroe County, alleging misrepresentation in the sale of the business, violation of the Tennessee Consumer Protection Act, and sought compensatory and punitive damages along with stating a prayer for general relief. Defendant took possession under the security agreement filed in conjunction with the promissory note and sold the business May 22, 1997. In her Answer filed June 30, 1997, Defendant denied Plaintiffs' allegations, asserted a counterclaim for amounts owing under the promissory note and other agreements, and also prayed for general relief from the Trial Court.

On November 30, 1998, the Chancellor, sitting without a jury, heard testimony from the parties and witnesses. On February 2, 1999, an Order was filed in which Defendant was found to have carelessly or recklessly made misrepresentations to Plaintiffs concerning the income potential of the business. Plaintiffs' claims under the Tennessee Consumer Protection Act were denied. Defendant's counterclaim as to amounts owing under the promissory note was dismissed. The Trial Court awarded Plaintiffs damages of \$49,000.00 for the total payments made to Defendant toward the purchase of the business and real property, \$4,330.00 for monies paid to meet the obligations of the business out of Plaintiffs' "personal funds," and awarded Defendant \$915.75 in a set-off for unpaid wages and amounts due under the vending machine contract. This Order, therefore, awards Plaintiffs a total of \$52,414.25. It is from this Order of the Trial Court that Defendant has appealed.

DISCUSSION

Defendant raises three issues on appeal:

- I. The Court erred in finding that the Defendant acted carelessly or recklessly when she made representations concerning the income potential of the business.
- II. Even if the Defendant did make negligent representations as to the condition of

the business to the Plaintiff, the award of damages in the amount of \$53,330.00 was in error.

III. Plaintiff elected to sue for damages and the Court erred in dismissing the counter-complaint of the Defendant for the balance due on the promissory note and the defaults under the lease purchase agreement on the real estate.

This case was tried by the Chancellor sitting without a jury, making our scope of review on appeal *de novo* upon the record below. This review is undertaken with a presumption that the findings of fact by the Chancellor are correct, unless the evidence in the record preponderates against such findings. T.R.A.P. Rule 13(d); *Town of Bruceton v. Arnold*, 818 S.W.2d 347, 349 (Tenn. Ct. App. 1991).

Defendant's first stated issue is whether the Chancellor erred in finding that the Defendant acted carelessly or recklessly when she made representations concerning the income potential of the business.

In commercial transactions the law has recognized a less stringent standard of liability for fraudulent misrepresentations than the common law action for deceit. One who, in the course of his business, profession, or employment, or during a transaction in which he had a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon such information, if he fails to exercise reasonable care or competence in obtaining or communicating the information. This standard of liability substitutes a reasonable care standard for the common law scienter requirement. In other words, in business transactions, a defendant can be held liable for negligent misrepresentations.

Haynes v. Cumberland Builders, Inc., 546 S.W.2d 228, 232 (Tenn. Ct. App. 1976).

As previously noted, the findings of fact of the Trial Court are reviewed under a presumption of correctness, unless the preponderance of the evidence as revealed in the record is otherwise. The Order of the Trial Court specifically discusses the real estate listing agreement as a source of misrepresentation by Defendant, but also notes that the Chancellor reviewed the entire file, which includes the operating income information supplied by Defendant's accountant as well as federal income tax returns and other documents. From our review of the record, the evidence does not preponderate against the Trial Court's finding that the representations of Defendant were misrepresentations.

As to the income figures supplied to Plaintiffs on the real estate listing sheet, the testimony was in conflict as to the source of the income figures. As there was contradictory testimony on this issue, it appears that the Chancellor based her findings upon her determinations of the credibility of the witnesses at trial and found that Defendant was responsible for the income figures. We must give difference to the Trial Court's determination of the credibility of the witness. *See, Fielder v. Lakesite Enterprises, Inc.*, 871 S.W.2d 157, 160 (Tenn. Ct. App. 1993), *Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 425-426 (Tenn. 1989). After examining the accounting and tax records provided by Defendant, the Chancellor determined that there was no basis in fact for the statements of past income attributed to Defendant. This information was found to have been provided by Defendant for the purpose of providing information relevant to the sale of the business, and that this information was supplied by Defendant's agent to Plaintiffs in the course of the negotiations leading to the contract.

Defendant's argument on appeal centers upon the "intention" of Defendant in supplying the income information to Plaintiffs. Defendant argues that the information could be accurate taken in a context different from that found by the Trial Court if the income figures for the two business locations are analyzed separately. The Chancellor found that the income figures were on the Exclusive Listing For Sale document provided to Plaintiff, and that Defendant had intended this information to be a representation of the monthly gross and net income of the business. Based upon the evidence, the Chancellor determined that there was no basis in fact for the income figures, making them misrepresentations by Defendant. The evidence does not preponderate against these findings. Defendant's testimony that she did not know the source of the inaccurate income figures is a matter of credibility for the Trial Court, and it is apparent from the Order that such determinations of credibility went into the finding that Defendant, at a minimum, failed to exercise reasonable care or competence in communicating this inaccurate information to Plaintiffs. The Chancellor found that Plaintiffs' conduct was influenced when they relied upon the income figures in entering the transaction, and that such reliance was reasonable under the facts of this case. We

hold that the evidence in the record does not preponderate against the factual findings of the Chancellor, and affirm the Order of the Trial Court as to the nature and impact of Defendant's representations relating to the contract.

As to Defendant's second issue, we affirm the amount of the award. The Chancellor awarded Plaintiffs \$49,000.00 for payments made under the promissory note and for other related payments by Plaintiffs, and an additional \$4,330.00 paid out of Plaintiffs' "personal funds" to meet the obligations incurred in the operation of the business. Plaintiffs operated this business for several months and received no net income as all income from the business was used to pay for expenses relating to the either the operation of the business or the purchase of the business. The purpose of compensatory damages is to compensate the wronged party for the loss or injuries caused by the wrongdoer's conduct. *Inland Container Corp. v. March*, 529 S.W. 2d 43,44 (Tenn. 1975) (holding abrogated on other grounds). These tort damages need not be calculated with mathematical precision. *Keith v. Murfreesboro Livestock Market, Inc.*, 780 S.W. 2d 751, 755 (Tenn. Ct. App. 1989).

To allow Defendant to keep the money received under the contract entered into by Plaintiffs because of Defendant's misrepresentations would be unjust enrichment to Defendant. Such an outcome would result in Plaintiffs having operated the business for Defendant for free, also an unjust result. The Chancellor correctly determined the Defendant would not be allowed to benefit from her misrepresentations. Defendant cannot by means of misrepresentations force Plaintiffs into involuntary servitude for Defendant's benefit.

The awarding of these damages does not place Plaintiffs in a better position than prior to entering into the contract with Defendant. Where a trial court hears a case without a jury, we review the amount of damages awarded by the trial court as a question of fact with the presumption that it is correct, and will alter the amount of damages only if the trial court utilized the wrong measure of damages or when the evidence preponderates against the amount of damages awarded. *See T.R.A.P. Rule 13 (d); Armstrong v. Hickman Co. Highway Dept.*, 743 S.W.2d 189, 195 (Tenn.

Ct. App. 1987). Neither circumstance is present in the record before us. We hold that the Chancellor did not err in calculating this award to Plaintiffs against Defendant.

Defendant's third issue is based upon the argument that the Chancellor, in the Order on appeal, rescinded the contract. Defendant argues, "[t]here was no prayer for any alternative relief such as rescission of the Contract and in fact nowhere in the entire record is the word 'rescission' to be found." Defendant is in error. The Chancellor did not rescind the contract. Paraphrasing Defendant, nowhere in the Order of the Trial Court is the word 'rescission' to be found. As noted above, the contract had already been terminated, and Defendant had taken back and resold the property under her recorded security interest. As the Trial Court did not err in its determination that Defendant "acted carelessly or recklessly when she made representations" concerning the object of the contract by Defendant, and found reliance upon such representations by Plaintiffs in agreeing to the contract, we find no reversible error in the Chancellor's Order awarding damages to Plaintiffs and dismissing Defendant's related counterclaim.

Plaintiffs assert error in the Trial Court's failure to address additional damages averred by Plaintiffs in the amount of wages lost when Plaintiffs quit their jobs to go into the laundry business. The decision to quit work and enter self-employment had apparently been made by Plaintiffs when they made contact with the real estate agent to inquire about purchasing the Tub O Suds. It does not appear from the record that the misrepresentations made by Defendant induced Plaintiffs to seek self-employment, but only relate to this particular business opportunity in Monroe County. We find no error by the Trial Court on this issue.

Addressed in the Order as a separate issue, the Chancellor awarded Defendant \$915.75 due for wages and for payments owing under a contract with Plaintiff Earl Smith for vending machines used by Plaintiffs in the business. Plaintiffs have not challenged this award on appeal.

CONCLUSION

The Judgment of the Trial Court is affirmed. Costs of this appeal are taxed to the

Appellant, Emily B. Williams.

D. MICHAEL SWINEY, J.

CONCUR:

HOUSTON M. GODDARD, P.J.

CHARLES D. SUSANO, JR., J.